

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MARYLAND (BALTIMORE DIVISION)

THE CIT GROUP/EQUIPMENT FINANCING, INC., *

PLAINTIFF, *

v. * CASE No. 03-CV-00197

THE LANDMARK ASSOCIATED COMPANIES, INC., *

DEFENDANT. *

* * * * *

MOTION OF THE CIT GROUP/EQUIPMENT FINANCING, INC.
FOR ENTRY OF ORDER OF DEFAULT AND DEFAULT JUDGMENT

Plaintiff, The CIT Group/Equipment Financing, Inc. ("CIT"), by its attorneys and pursuant to FED. R. CIV. P. 55(b), moves for entry of default and default judgment against defendant The Landmark Associates Companies, Inc. ("Landmark"), and as grounds therefore, states as follows:

1. CIT filed the complaint (the "Complaint") in this matter on January 22, 2003.
2. The Court issued the summons (the "Summons") to be served on Landmark with the Complaint and related documents on January 22, 2003.
3. Service was made upon an agent of the Maryland State Department of Assessment and Taxation ("SDAT") on April 10, 2003, as evidenced by the affidavit of service of Darren M. Cady (the "Cady Affidavit"). A copy of the Cady Affidavit is attached hereto and incorporated herein as Exhibit A.
4. FED. R. CIV. P. 4(h)(1) provides in relevant part that service of process may be made upon an corporation, "... by delivering a copy of the summons and of the complaint to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process . . ."

5. The Md. Rules allow for substitute service upon the SDAT under certain circumstances. Rule 2-124 provides in relevant part that, “[s]ervice may be made upon a corporation . . . by serving two copies of the summons, complaint, and all other papers file with it, together with the requisite fee, upon the [SDAT] if . . . (iii) two good attempts on separate days to serve the resident agent have failed.”

6. The Cady Affidavit indicates that Mr. Cady made four good faith attempts on four separate days to serve Robert R. Gregory, Jr., resident agent of Landmark, at three separate addresses. When these attempts failed, Mr. Cady effectuated service of process on Landmark by serving SDAT in accordance with Maryland law. *Cady Aff.* ¶¶ 1-6.

7. Landmark’s response to the Complaint was due to be filed with this Court on or before April 30, 2003. FED. R. CIV. P. 12(a)(1)(A).

8. Landmark failed to plead or otherwise defend the Complaint as required by FED. R. CIV. P. 55(a).

9. When a defendant fails to appear or file a responsive pleading during the time allotted, the clerk shall enter that party’s default. *See* FED. R. CIV. P. 55(a). Then, upon application of the plaintiff, the court shall enter a judgment by default. *See* FED. R. CIV. P. 55(b).

10. Landmark’s breaches of the Guaranty and Agreement 2 have damaged CIT in the amount of \$568,437.18, including a principal amount of \$546,218.91, attorney’s fees and expenses of \$22,218.27 and court costs, as evidenced by the affidavit of Tom Tiko (the “Tiko Affidavit”). The original Tiko Affidavit is attached hereto and incorporated herein as Exhibit B.

WHEREFORE, Plaintiff, The CIT Group/Equipment Financing, Inc., respectfully

requests:

A. That the Clerk of the Court enter The Landmark Associates Companies, Inc.'s default;

B. That the Court enter an Order granting default judgment in CIT's favor and against defendant The Landmark Associated Companies, Inc. in the total amount of \$568,437.18, including a principal amount of \$546,218.91, attorney's fees and expenses of \$22,218.27 and court costs, with post-judgment interest at the legal rate until the judgment is fully paid; and

C. That the Court such other and further relief as the Court deems necessary or appropriate.

/s/ Steven N. Leites

Steven N. Leites, Fed. Bar No. 05856

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*Attorneys for The CIT Group/
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing, along with exhibits and proposed *Order of Default* and proposed *Order Entering Default Judgment*, were sent via first class mail, postage prepaid this 22nd day of September, 2003 to:

The Landmark Associated Companies, Inc.
Attn.: Robert R. Gregory, Jr. Resident Agent
1601 Chicksaw Road
Westminster, MD 21158

/s/ Steven N. Leites

Steven N. Leites